The defendants say that they are quite prepared and will furnish in Taiwan security for the plaintiffs' claim in the sum of US Dollars Four Million but I think the court should view this offer in the light (1) that the defendants are a small company, so small that in October, 1972, they informed the Taiwan Ministry of Communications that they were going to have difficulties in operating the vessel; (2) that the defendants said that they would give security after the arrest of the vessel but such security was not forthcoming. One cannot blame the plaintiffs for saying that they have no confidence in the defendants' offer of security in Taiwan. The danger of the plaintiffs being completely exposed if the security here disappears is certainly very real. In *The Atlantic Star* the shipowner, the Holland-American Line, was a big firm of shipowners operating a line of ships and sailing regularly to the port of Antwerp.

For the defendants it has been urged very strongly upon me that in the exercise of the discretion of the court I should stay the action here as it will be much more convenient to proceed in Taiwan. I have considered this very carefully but I must look at all the surrounding features of this case to see how much there is in that submission.

In *The Monte Urbasa*[4] in the course of his judgment the President who heard the motion said (at page 590): —

"In the absence of anything in the nature of overwhelming convenience or indeed in the absence of any strong balance of convenience, in favour of the trial in Argentina, I do not think I ought to deprive the plaintiffs in this action of their right to proceed here."

In *The Atlantic Star*, which is relied on heavily by the defendants, the circumstances were exceptional not only in relation to security but also in the number of proceedings (four in all) that had been taken in Belgium and the exposure of the defendants in that case, on the application of the plaintiff, to a full inquiry in Belgium and the report on that inquiry appeared to be favourable to the defendants.

It is for the defendants in this motion to satisfy me in all the circumstances of the case that this action is vexatious or oppressive and after giving considerable thought to the matter, I have come to the conclusion that they have not satisfied me that this action is vexatious or oppressive or an abuse of the process of the court.

In the result I do not stay the action in this court as prayed by the defendants.

This motion fails and is dismissed with costs.

Motion dismissed.

Solicitors: *Drew & Napier; Lee & Lee.*

HOUSING & DEVELOPMENT BOARD v. LAI SENG KAK

[O.C.J. (Chua J.) November 2, 1973]

[Singapore — Suit No. 305 of 1972]

Housing and Development Board — Application for purchase of flat — False statement — Failure to exercise re-entry right — Continuation to receive purchase payments — Whether there was waiver of right to forfeit.

The defendant on 23 October 1964 applied to purchase a two-room flat in Queenstown Estate from the plaintiffs. In the application form the defendant declared that neither he nor any member of the family listed in the application owned any land or house and that he clearly understood that the said application for purchase would be cancelled and any monies paid would be forfeited if any of the information he had given in the application was found to be false. In the particulars of his family the defendant listed his father.

On 16 November 1964 the parties entered into an agreement whereby the plaintiffs agreed to grant and the defendant agreed to accept a lease for the flat in question for a term of 99 years upon certain considerations. Pursuant to that agreement a lease dated 19 December 1967 was executed by the plaintiffs in favour of the defendant and a mortgage of the same date was executed by the defendant to the plaintiffs.

In May 1967 the plaintiffs discovered that the defendant's father was the owner of property known as No. 453 Lorong 3 since 1961. Although the plaintiffs knew that the defendant had made the false declaration, they granted the lease to the defendant.

Held: the conduct of the plaintiffs in granting the lease to the defendant although they knew that the defendant had made the false declaration amounted to a waiver of their right to forfeit.

Case referred to:-

(1) *Croft* v. *Lumley* 10 E.R. 672.

SUIT.

Goh Joon Seng for the plaintiffs.

Amarjit Singh for the defendant.

Chua J.: The short facts are these. On the 23rd October, 1964, the defendant submitted an application for the purchase of a two-room flat in Queenstown Estate from the plaintiffs. In the said application the defendant declared, *inter alia*, that neither he nor any member of the family listed in the said application owned any land or house and that he clearly understood that the said monies paid would be forfeited if any of the information he had given in the application was found to be false.

In the "Particulars of Applicant's Family", the defendant listed his father Lai Shan Siong.

On the 16th November, 1964, the plaintiffs and the defendant entered into an agreement whereby it was agreed that the plaintiffs would grant and the defendant accept a lease of a flat known as No. 119-F Commonwealth Close, Queenstown, Singapore, 3, for a term of 99 years in consideration of the capital payment of $4,900 and a yearly rent of $1. The said capital payment was to be paid by an initial payment of $900 and the balance by monthly instalments of $46 each with effect from 1st December, 1964.

Pursuant to the said Agreement, a lease dated the 19th December, 1967, for a term of 99 years commencing on the 1st January, 1967, was executed by the plaintiffs in favour of the defendant and a mortgage dated the 19th December, 1967, was executed by the defendant by which the defendant assigned the said flat to the plaintiffs to secure payment of the balance of the capital payment. Clause 4 of the lease, so far as it is relevant to this case, provides that "if the Lessee herein has submitted a false statement in his form of application for the purchase of the Flat then ... it shall be lawful for the Board at any time thereafter to re-enter upon the Flat or any part thereof in the name of the whole and thereupon this demise shall absolutely determine but without prejudice to any right

of action or remedy of the Board in respect of any antecedent breach of any of the Lesses's covenants or the conditions herein contained".

In May, 1967, the plaintiffs discovered that the defendant's father was the owner of property known as No. 453, Lorong 3, Geylang, Singapore, since 1961.

The plaintiffs now claim:

(1) rescission of the Agreement, the Lease and the Mortgage.
(2) Possession of the flat.
(3) Forfeiture of all payments that have been made by the defendant.
(4) Damages and or alternatively payments of all monthly instalments to date of possession and
(5) Service and conservancy charges at the rate of $10 p.m. until delivery of possession to the plaintiffs.

At the close of the plaintiffs' case the defendant elected not to adduce evldence and submitted that there was no case to answer.

The application form submitted by the defendant (Ex. P1) contains the following

Declaration: —

"I declare that: —

(i) All the particulars given in this form are true in substance and fact.
(ii) Neither I nor any member of the family listed in this form own any land or house.
(iii) No other member of my family listed in this form has made a separate application to purchase a Housing Board flat.
(iv) To the best of my knowledge and belief there are no outstanding judgments against me or court cases pending against me.
(v) I clearly understand that my application to purchase will be cancelled and any monies paid will be forfeited if any of the information I have given in this form is found to be false."

The defendant's signature appears below the Declaration.

The evidence of Ng Yam Jin, the Regional Housing Officer of the plaintiffs was shortly this. On the 23rd October, 1964, in the morning the defendant's application form was handed to him. In "Particulars of Applicant's Family" there were two names — the defendant's name and the name of the defendant's brother. The Declaration had already been signed by the defendant. He told the defendant that the defendant was not eligible for a flat as there was no nucleus of a family. He asked the defendant if he had parents who would like to stay with him but neither of the parents should be owner of a house. The defendant went away taking the application form with him. Sometime in the afternoon the defendant came back bringing with him the identity cards of his parents. The defendant asked him to help to fill the names of his parents in the application form and handed the two identity cards to him. He filled in the names of the parents in the application form as well as their particulars which were given by the defendant. After that he directed the defendant to pay the deposit to the cashier. The application was then registered on the waiting list.

In cross-examination Ng Yam Jin said that he read out and translated each of the five clauses of the Declaration to the defendant in Hokkien. He also said that before he filled in the names of the parents he asked the defendant if his parents owned any land or house and on being told that they did not he filled in the two names. In answer to the court he said that he explained the clauses in the Declaration to the defendant before he filled in the names of the parents. He further said that he explained the clauses in the morning as well. He said that since the Declaration had already been signed there was no necessity to get the defendant to sign the Declaration again in the afternoon. He denied the allegation that he did not explain the Declaration to the defendant.

I accept the evidence of Ng Yam Jin that the Declaration was read and explained to the defendant.

When the plaintiffs became aware in May, 1967, that the defendant's father owned No. 453 Lorong 3, Geylang, they took up the matter with the defendant who wrote to the plaintiffs asking for permission to sell the flat to which the plaintiffs agreed. The plaintiffs valued the flat at $5,434.01 in March, 1968, and informed the defendant that he would be allowed to sell the flat at that price to an approved applicant but this was turned down by the defendant. Later the defendant was told on two occasions that he could sell the flat at any price but it must be to an approved buyer who was registered in the plaintiffs' sale section for the purchase of a flat. There was no response from the defendant.

In the meanwhile the defendant remained in possession of the flat and the plaintiffs continued to collect the purchase instalments up to November, 1971, when the plaintiffs decided to take legal action against the defendant. The writ was filed in February, 1972.

The defendant has paid $900 initial deposit and $3,436.50 by way of purchase instalments plus interest from December, 1964, to November, 1971.

The defendant is contesting the claim on a number of grounds. The main ground is that the plaintiffs have waived their right to forfeit the lease and the payments that had been made by the defendant.

Counsel for the defendant submits that the plaintiffs with full knowledge that the defendant had made a false declaration had, at the request of the defendant, agreed to allow the defendant to sell the flat to a purchaser approved by the plaintiffs and had demanded and collected further purchase instalments in respect of the flat and they have thereby waived their rights to forfeit the lease and the payments that had been made by the defendant.

In *Croft* v. *Lumley*,[1] Lumley became tenant of a theatre under a long lease which contained covenants not to convert it to any other use than those of a theatrical kind, but to use his utmost endeavours to improve it for that use, not to grant or let the boxes or stalls for a longer period than one year or season and not to encumber the property. The lease contained a clause of re-entry for forfeiture of the lease at any time for breach of covenant.

Lumley, on account of embarrassments, shut up the theatre. He had previously let the boxes for a year or a season but leases of these were executed from a period which calculated with the date fixed for the termination of such leases, exceeded the period of one year, and he gave two *bona fide* creditors warrants of attorney on which they entered up judgments.

The lessor became acquainted with the existence of these judgments and with the mode in which leases of boxes had been granted. Lumley tendered money as rent. The lessor refused to receive it as rent but finally did accept it, though protesting that he took it not as rent under the lease but as compensation for the occupation of the premises merely and that he did not mean to waive, but expressly reserved the right of re-entry.

It was held by the House of Lords that this acceptance of the money, if there had been any forfeiture by breaches of covenant, was a waiver of such forfeiture.

In the present case the plaintiffs came to know in May, 1967, that the defendant had made a false declaration in his form of application for the purchase of the flat and yet not only did they continue to receive further purchase payments right up to November, 1971, but also granted a lease to the defendant in December, 1967, knowing that the defendant had made the false declaration. In my view the plaintiffs have waived their right to forfeit.

There is no substance in any of the other grounds put up by the defendant.

The claim of the plaintiffs is dismissed with costs.

Claim dismissed.

Solicitors: *Chan, Goh & David See; David Marshall.*

MALAYSIAN REPORTS

MING LIAN CORPORATION SDN. BHD. v. HAJI NOORDIN

[O.C.J. (Pawan Ahmad J.) October 21, 1972]

[Malacca — Civil Suit No. 22 of 1969]

Hire-purchase — Blank form of hire-purchase agreement signed by hirer — Form filled in after execution — No fraud or misrepresentation alleged — Whether valid — Evidence of terms outside written agreement — Evidence Act, 1950, s. 92(c).

In this case the owners by virtue of a hire-purchase agreement relating to a motor car applied to terminate the agreement and recover possession of the motor vehicle by reason of default by the hirer in payment of the sums due under the agreement. At the hearing the defence introduced evidence with the object of showing that the hire-purchase agreement was a fictitious document. The evidence showed that when the defendant signed the hire-purchase agreement certain portions of it were blank. The particulars were filled in after the agreement was signed. It was alleged that the hire-purchase agreement was in fact a bill of sale and as such void without registration.

Held: (1) as neither fraud nor misrepresentation was pleaded or proved, the hire-purchase agreement was valid, despite the fact there were blanks which were filled up after execution;

(2) in this case the defendant was aware of the terms of the hire-purchase and he knew that what he was signing was a binding contract of hire-purchase between him and the plaintiffs;

(3) the plaintiffs as owners were justified in terminating the agreement as the defendant had fallen into arrears of the instalments due.

Case referred to:-

(1) *Gallie* v. *Lee & Anor.* [1969] 1 All E.R. 1062.

CIVIL SUIT.

S. G. Thakurta for the plaintiffs.

D. A. Devadason for the defendant.

Pawan Ahmad J.: The basis of this action is a hire purchase agreement in respect of motor car No. MC 2460 entered into between the plaintiffs and the defendant on the 17th November 1967. The hire purchase price was $9,545.91 payable by an initial payment of $2,115.91, 29 payments of $247.35 and one final payment of $256.85. Clause 4 of the agreement empowers the owners to terminate the agreement and recover possession of the motor car in the event of default by the hirer of any sums due under the agreement.

By their statement of claim the plaintiffs claimed the following: —

(a) $767.31 for arrears of hire rent.

(b) $5,115.25 for depreciation etc.

(c) $175.38 for insurance premium

(d) $120.00 seizing fee.

(e) Interest.

(f) Costs.

At the commencement of the hearing counsel for the plaintiffs informed the court that he was abandoning the claim for $5,115.25 referred to in (b) above. So, for the purposes of the plaintiffs' claim, only paragraphs (a), (c), (d), (e) & (f) above are material for the present hearing.